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11
12 **UNITED STATES DISTRICT COURT**
13 **WESTERN DISTRICT OF NEW YORK**

14 KRUMMHOLZ INTERNATIONAL INC.
15 and SWISSDIGITAL USA CO., LTD.,

16 Plaintiffs,

17 v.

18 WENGER S.A.,

19 Defendant.

20 Hon. William M. Skretny, U.S.D.J.
21 Docket No.: 1:15-cv-86-WMS

22 **DECLARATION OF RICHARD H.**
23 **BROWN IN SUPPORT OF WENGER**
24 **S.A.'S MOTION TO DISMISS THE**
25 **CORRECTED SECOND AMENDED**
26 **COMPLAINT PURSUANT TO FED. R.**
27 **CIV P. 12(b)(1)**

28 I, RICHARD H. BROWN, declare under penalty of perjury pursuant to 28 U.S.C. §
1746 as follows:

29 1. I am an attorney licensed in the states of New York and New Jersey and admitted
30 to the bar of this Court *pro hac vice* in this matter. I am a partner at the law firm of Day Pitney
31 LLP, counsel to Wenger S.A., defendant in this action (“Wenger” or “Defendant”).

32 2. I submit this Declaration to provide this Court with exhibits and information in
33 support of Wenger’s Notice of Motion to Dismiss the Corrected Second Amended Complaint
34 filed by Plaintiffs Krummholz International, Inc. (“Krummholz”) and Swissdigital USA Co.,
35 Ltd. (“Swissdigital,” and collectively, “Plaintiffs”) pursuant to Fed. R. Civ. P. 12(b)(1). The
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1 information set forth herein is based on my personal knowledge or upon my review of public
2 records and other publicly available information, as stated below.

3 3. I attach as Exhibit A hereto a copy of Wenger's U.S. Registration No. 3,769,824
4 for SWISSGEAR, which issued on April 6, 2010.

5 4. On June 10, 2015, Wenger filed an action in the United States District Court the
6 District of Nevada case against Krummholz, Swissdigital, and a number of other related parties
7 for infringement of Wenger's trademark and copyright rights, and moved for an *Ex Parte*
8 Temporary Restraining Order and a Preliminary Injunction. (A copy of Wenger's Complaint
9 (without exhibits) and its Motion for a Temporary Restraining Order and a Preliminary
10 Injunction (without exhibits) are attached hereto as Exhibits B and C, respectively). Wenger
11 filed the action after discovering that Fuzhou Hunter and Hunter Li were infringing Wenger's
12 rights at a June 9-11, 2015 Licensing Expo in Las Vegas, Nevada.

13 5. In their opposing papers, defendants in the Nevada case (including Krummholz
14 and Swissdigital) asserted that Wenger's registrations for SWISSGEAR (including Reg. No.
15 3,769,824) are descriptive and geographically deceptive, suggesting that the goods were made in
16 Switzerland, and cited to proceedings in other countries which they have brought against
17 Wenger's registrations in support of their argument. (A copy of the Nevada case Defendants'
18 June 19, 2015 Opposition (without exhibits) is attached hereto as Exhibit D).

19 I hereby declare under penalty of perjury that the foregoing statements are true and
20 correct. Executed on August 13, 2015.



21 RICHARD H. BROWN
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